

Honorable James P. Donohue

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
corporation,

Plaintiff,

v.

TRELLIAN, LLC, a California Partnership;
TRELLIAN PTY. LTD, an Australian
Proprietary Company; and DOMAIN PARK
LTD, en entity of unknown origin,

Defendants.

No. C08-0776-JPD

PROTECTIVE ORDER REGARDING
HANDLING OF TRADE SECRETS
AND CONFIDENTIAL MATERIAL

THIS MATTER came before the Court on the stipulated motion of plaintiff Microsoft Corporation and defendants Trellian, LLC and Trellian Pty. Ltd., for entry of a Protective Order Regarding Handling of Trade Secrets and Confidential Material. Having considered the parties' agreed motion and the other pleadings and papers filed in this matter, and to protect the confidentiality of proprietary and trade secret information contained in documents produced and information disclosed in this litigation,

IT IS HEREBY ORDERED that the following Protective Order be entered in this matter and that the parties shall follow the procedures set forth below with respect to information, documents, or things produced in this litigation:

PROTECTIVE ORDER REGARDING HANDLING
OF TRADE SECRETS AND CONFIDENTIAL
MATERIAL - 1

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1 1. This Order shall be applicable to and govern all depositions, documents,
2 information or things produced in response to requests for production of documents, answers
3 to interrogatories, responses to requests for admissions and all other discovery taken pursuant
4 to the Federal Rules of Civil Procedure, as well as testimony adduced at trial, matters in
5 evidence and other information which the disclosing party designates as "CONFIDENTIAL
6 MATERIAL" or "ATTORNEYS ONLY MATERIAL" hereafter furnished, and any material
7 designated as "CONFIDENTIAL" disclosed or produced prior to the date of this Order,
8 directly or indirectly, by or on behalf of any party or any nonparty witness in connection with
9 this action. As used herein, "disclosing party" shall refer to the parties to this section or to
10 third parties who give testimony or produce documents or other information.

11 2. The following information may be designated as "CONFIDENTIAL
12 MATERIAL": any trade secret or other confidential research, design, development, financial,
13 or commercial information, as such terms are used in Rule 26(c)(7) and any applicable case
14 law interpreting Rule 26(c)(7), contained in any document, discovery response or testimony.
15 Each provision in this Order applying to "CONFIDENTIAL MATERIAL" shall also apply to
16 material designated as "CONFIDENTIAL" disclosed or produced prior to the date of this
17 Order.

18 3. The following information may be designated as "ATTORNEYS ONLY
19 MATERIAL": any trade secret or other confidential research, design, development, or
20 commercial information, as such terms are used in FRCP 26(c)(7) and any applicable case law
21 interpreting Rule 26(c)(7), contained in any document, discovery response, or deposition
22 testimony, that is entitled to a higher level of protection due to its commercial sensitivity.

23 4. In designating information as "CONFIDENTIAL MATERIAL" or
24 "ATTORNEYS ONLY MATERIAL," a disclosing party shall make such a designation only
25 as to materials which it in good faith believes is confidential. "CONFIDENTIAL
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1 MATERIAL” and “ATTORNEYS ONLY MATERIAL” shall be used by the parties to this
2 litigation solely for the purpose of conducting this litigation, but not for any other purpose
3 whatsoever.

4 5. In the absence of written permission from the disclosing party, or an order of
5 the Court, information designated as “CONFIDENTIAL MATERIAL”, or as
6 “CONFIDENTIAL” in the case of materials disclosed or produced prior to the date of this
7 Order, shall be used solely for the purposes of litigation between the parties hereto, and may
8 be disclosed by the parties only to the following persons:

9 a. The attorneys working on this action on behalf of any party, including
10 in-house attorneys and staff, stenographic and clerical employees and contractors
11 working under the direct supervision of such counsel;

12 b. Any person not employed by a party who is expressly retained or
13 sought to be retained by any attorney described in paragraph 5(a) to assist in
14 preparation of this action for trial, with disclosure only to the extent necessary to
15 perform such work;

16 c. Employees of a party who are required by such party to work directly
17 on this litigation, with disclosure only to the extent necessary to perform such work;

18 d. Any person of whom testimony is taken, except that such person may
19 be shown copies of “CONFIDENTIAL MATERIAL” in preparation for and during his
20 testimony, but may not retain any “CONFIDENTIAL MATERIAL”; and

21 e. The Court, jury, court personnel, court reporters, and other persons
22 connected with the Court.

23 6. In the absence of written permission from the disclosing party, or an order of
24 the Court, information designated as “ATTORNEYS ONLY MATERIAL” shall be used
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solely for the purposes of litigation between the parties hereto, and may be disclosed to only the following persons:

- a. The persons set forth in paragraph 5(a);
- b. The persons set forth in paragraph 5(b);
- c. The persons set forth in paragraph 5(d);
- d. The persons set forth in paragraph 5(e);

7. The persons described in paragraph 5(b) shall have access to the “CONFIDENTIAL MATERIAL,” and the persons described in paragraph 6(b) shall have access to the “ATTORNEYS ONLY MATERIAL” only after they have been made aware of the provisions of this Order and have manifested their assent to be bound thereby by signing a copy of the annexed “ACKNOWLEDGMENT.”

8. Each individual who receives any “CONFIDENTIAL MATERIAL” or “ATTORNEYS ONLY MATERIAL” hereby agrees to subject himself/herself to the jurisdiction of this Court for the purpose of any proceedings relating to the performance under, compliance with or violation of this Protective Order. Each individual (other than court personnel) who receives any “CONFIDENTIAL MATERIAL” or “ATTORNEYS ONLY MATERIAL” shall be provided with a copy of this Protective Order by the person providing such material.

9. The recipient of any “CONFIDENTIAL MATERIAL” or “ATTORNEYS ONLY MATERIAL” that is provided under this Order shall maintain such information in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such information as is exercised by the recipient with respect to its own proprietary information. “CONFIDENTIAL MATERIAL” or “ATTORNEYS ONLY MATERIAL” shall not be copied, reproduced, summarized or abstracted, except to the extent that such copying, reproduction, summarization or abstraction

1 is reasonably necessary for the conduct of this lawsuit. All such copies, reproductions,
2 summarizations, extractions, and abstractions shall be subject to the terms of the Order, and
3 labeled in the same manner as the designated material on which they are based

4 10. Disclosing parties shall designate "CONFIDENTIAL MATERIAL" or
5 "ATTORNEYS ONLY MATERIAL" as follows:

6 a. In the case of documents, interrogatory answers, responses to requests
7 to admit, and the information contained therein, designation shall be made by placing
8 the following legend on every page of any such document prior to production:

9 "CONFIDENTIAL MATERIAL" or "ATTORNEYS ONLY MATERIAL." In the
10 event that a party inadvertently fails to stamp or otherwise designate a document or
11 other information as "CONFIDENTIAL MATERIAL" or "ATTORNEYS ONLY
12 MATERIAL" at the time of its production, that party may at any time thereafter stamp
13 or otherwise designate the document or other information as "CONFIDENTIAL
14 MATERIAL" or "ATTORNEYS ONLY MATERIAL." Such document or other
15 information shall be treated as designated beginning at the time such designation
16 occurs.

17 b. In the case of depositions, designation of the portion of the transcript
18 (including exhibits) which contains "CONFIDENTIAL MATERIAL" or
19 "ATTORNEYS ONLY MATERIAL" shall be made by a statement to such effect on
20 the record in the course of the deposition or, upon review of such transcript, by
21 counsel for the party to whose "CONFIDENTIAL MATERIAL" OR "ATTORNEYS
22 ONLY MATERIAL" the deponent has had access, which counsel shall designate
23 within fourteen (14) days after counsel's receipt of the transcript. During those
24 fourteen days, the entire deposition transcript, including exhibits, shall be deemed
25 "CONFIDENTIAL MATERIAL," unless counsel during the deposition states that the
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1 information is "ATTORNEYS ONLY MATERIAL" in which case that portion of the
2 deposition designated as "ATTORNEYS ONLY MATERIAL" shall carry that
3 designation for the fourteen day period.

4 c. Any "CONFIDENTIAL MATERIAL" or "ATTORNEYS ONLY
5 MATERIAL" produced in a nonpaper media (*e.g.*, videotape, audiotape, computer
6 disk, etc.) may be designated as such by labeling the outside of such nonpaper media
7 as "CONFIDENTIAL MATERIAL" or "ATTORNEYS ONLY MATERIAL" and
8 filing this material in a sealed envelope with a legend described in paragraph 9(c). In
9 the event a receiving party generates any "hard copy," transcription, or printout from
10 any such designated nonpaper media, such party must treat each copy, transcription, or
11 printout as designated and label it in a manner effective to ensure proper treatment.

12 11. A party shall not be obligated to challenge the propriety of a
13 "CONFIDENTIAL MATERIAL" or "ATTORNEYS ONLY MATERIAL" designation at the
14 time made, and failure to do so shall not preclude a subsequent challenge thereto during the
15 pendency of this litigation. In the event that any party to this litigation disagrees at any stage
16 of these proceedings with such designation, such party shall provide to the producing party
17 written notice of its disagreement with the designation. The parties shall first try to resolve
18 such dispute in good faith on an informal basis. If the dispute cannot be resolved, the party
19 challenging the designation may request appropriate relief from the Court, but in any event,
20 such relief from the Court shall not be requested before ten (10) days after the producing party
21 is served with said written notice. However, in the event of a dispute about the propriety of a
22 designation that arises in connection with the denial of a motion to seal (*see* paragraph 12
23 below), the party challenging the designation may request an immediate telephonic motion
24 pursuant to Local Rule 7(h) to resolve the matter. The burden of proving that information has
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1 been properly designated as "CONFIDENTIAL MATERIAL" or "ATTORNEYS ONLY
2 MATERIAL" is on the party making such designation.

3 12. Documents containing "CONFIDENTIAL MATERIAL" or "ATTORNEYS
4 ONLY MATERIAL" of any party shall not be filed with the Court unless the filing party
5 believes it is reasonably necessary to do so for purposes of trial or motions, including without
6 limitation, motions for preliminary injunction or summary judgment, or other Court matters.
7 The parties shall take reasonable steps to file "CONFIDENTIAL MATERIAL" and
8 "ATTORNEYS ONLY MATERIAL" under seal pursuant to FRCP 26(c)(7) and Local Rule
9 5(g).

10 13. Nothing in this Order shall preclude any party to the lawsuit or their attorneys
11 (a) from showing a document designated as "CONFIDENTIAL MATERIAL" or
12 "ATTORNEYS ONLY MATERIAL" to an individual who either prepared the document
13 prior to the filing of this action, or is identified on the face of the document as an addressee or
14 copy addressee, or (b) from disclosing or using, in any manner or for any purpose, any
15 information or documents from the party's own files which the party itself has designated as
16 "CONFIDENTIAL MATERIAL" or "ATTORNEYS ONLY MATERIAL."

17 14. In the event any receiving party having possession, custody or control of any
18 "CONFIDENTIAL MATERIAL" or "ATTORNEYS ONLY MATERIAL" receives a
19 subpoena or other process or order to produce such information in another, unrelated legal
20 proceeding, from a nonparty to this action, such receiving party shall notify counsel for the
21 producing party or third party of the subpoena or other process or order, furnish counsel for
22 the producing party or third party with a copy of said subpoena or other process or order, and
23 cooperate with respect to all reasonable procedures sought to be pursued by the producing
24 party or third party whose interests may be affected. The producing party or third party
25 asserting the "CONFIDENTIAL MATERIAL" or "ATTORNEYS ONLY MATERIAL"

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1 treatment shall have the burden of defending against such subpoena, process or order. The
2 receiving party receiving the subpoena or other process or order shall be entitled to comply
3 with it except to the extent the producing party or third party asserting the "CONFIDENTIAL
4 MATERIAL" or "ATTORNEYS ONLY MATERIAL" treatment is successful in obtaining an
5 order modifying or quashing the subpoena or other process or order.

6 15. If information subject to a claim of attorney-client privilege or work product
7 immunity is inadvertently produced, such production shall in no way prejudice or otherwise
8 constitute a waiver of, or estoppel as to, any claim of privilege or work product immunity for
9 such information. Upon written request by the inadvertently producing party or third person,
10 the receiving party shall: (a) return the original and all copies of such documents or promptly
11 petition the Court for a determination whether (i) production is properly deemed inadvertent
12 or (ii) the document is subject to a claim of privilege; and (b) shall not use such information
13 for any purpose unless allowed by order of the Court.

14 16. Within sixty (60) days of the termination of litigation between the parties, all
15 "CONFIDENTIAL MATERIAL," all "ATTORNEYS ONLY MATERIAL," and all copies
16 thereof, shall be returned to the party which produced it or shall be destroyed. Counsel for
17 each party shall be entitled to retain all pleadings, motion papers, legal memoranda,
18 correspondence and work product.

19 17. Except as specifically provided herein, the terms, conditions, and limitations of
20 this Order shall survive the termination of this action.

21 18. This Protective Order is without prejudice to the right of any party to seek
22 relief from the Court, upon good cause shown, from any of the provisions contained herein.

23 19. This Protective Order shall not be construed as waiving any right to assert a
24 claim of privilege, relevance, overbreadth, burdensomeness or other grounds for not
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1 producing material called for, and access to such material shall be only as otherwise provided
2 by the discovery rules and other applicable law.

3 IT IS SO ORDERED:

4 DATED this 6th day of August, 2008.

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7 JAMES P. DONOHUE
8 United States Magistrate Judge

9 Presented by:

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13 Attorney for Plaintiff
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(Signature)

(Typed Name)

(Title or Position)

(Company)

(Dated)